

FILED

SEP 08 2014

Attachment A

U.S. DISTRICT COURT-WVND  
WHEELING, WV 26003**MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR  
CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY**

United States District Court		Northern District of West Virginia	
Name (under which you were convicted): David Lee Kidd, II		Criminal Case No.: 5:11-cr-00017	
Place of Confinement: FCI Fort Dix		BOP Prisoner No.: 54483-018	
United States of America v David Lee Kidd, II			

## MOTION

5:14-cv-122  
Stamp / Seibert/William

1. (a) Name and location of court that entered the judgment of conviction you are challenging: Federal Building and Courthouse, 1125 Chapline Street, Suite 247, Wheeling, WV 26003
- (b) Criminal case number (if you know): 5:11-cr-00017
2. (a) Date of the judgment of conviction (if you know): 10/24/2012
- (b) Date of sentencing: 10/22/2012
3. Length of sentence: 262 Months
4. Nature of crime (all counts): Conspiracy to Distribute a  
Controlled Substance; Money Laundering - Controlled Sub.;  
Conspiracy to Defraud the U.S.; Distribution Near a School  
Use of a Communication Facility, Engaging in Money  
Transfer; Controlled Substance Distribution; Racketeering  
Narcotics

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5. (a) What was your plea? (Check one)

Not guilty ☐

Guilty ☒

Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count of the indictment, and a not guilty plea to another count of the indictment, what did you plead guilty to and what did you plead not guilty to? Guilty - Conspiracy to Distribute &

Money Laundering - Cons. to Dist.

Not Guilty - CONsp. to Defraud, Use of Comm. Facility

Dist. near school, Engage in Money Trans., Racketeering

6. If you went to trial, what kind of trial did you have? (Check one)

Jury ☐

Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing?

Yes ☒

No ☐

8. Did you appeal from the judgment of conviction? Yes ☒ No ☐

9. If you did appeal, answer the following:

(a) Name of court: Court of Appeals for the Fourth Circuit

(b) Appeal case number (if you know): 12-4873

(c) Result: Affirmed

(d) Date of result (if you know): 6/6/2013

(e) Grounds raised: Sentencing Enhancement for Poss. of

Firearm

(f) Did you file a petition for certiorari in the United States Supreme Court?

☐ Yes

☒ No

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If yes, answer the following:

(1) Case number (if you know): \_\_\_\_\_

(2) Result: \_\_\_\_\_

(3) Date of result (if you know): \_\_\_\_\_

(4) Grounds raised: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court? ☐ Yes ☒ No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: \_\_\_\_\_

(2) Case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? ☐ Yes ☐ No

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

- (b) If you filed a second motion, petition, or application, give the same information:

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(1) Name of court: \_\_\_\_\_

(2) Case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(6) Did you receive a hearing where evidence was given on your petition, application, or motions?    ☐ Yes    ☐ No

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First Petition:            Yes ☐      No ☐

(2) Second petition:        Yes ☐      No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach no more than 5 typed or 10 neatly printed additional pages total for all grounds if you have more than four grounds. State the facts supporting each ground.

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**GROUND ONE: Ineffective Assistance of Counsel in Violation  
of The Sixth Amendment**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): See attached (Ground One)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (b)

**Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

Traditionally a claim that is of a constitutional nature

as the denial to effective representation, is more  
properly addressed in a §2255 motion. Additionally, as my

appellate attorney and appeal attorney were one in the  
same, I was unable to address this earlier.

(c) **Post Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application after conviction other than direct appeal?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed:

\_\_\_\_\_  
\_\_\_\_\_

Case number (if you know): \_\_\_\_\_

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Date of the Court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition or application?

☐ Yes ☐ No

(4) Did you appeal from the denial of your motion, petition, or application?

☐ Yes ☐ No

(5) If your answer to Questions (c)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

(6) What was the result? \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_

**GROUND TWO: Illeagle Search and Seizure of my vehicle in  
Violation of the Fourth Amendment**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): See attached (Ground 2)

(b) **Direct Appeal of Ground Two:**

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(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

As this is a constitutional issue it has been saved for the  
filing of this §2255 motion. Also counsel did not preserve  
this claim during initial proceedings, so it was unavailable  
for my Direct Appeal.

(c) **Post Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application after conviction other than direct appeal?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed:

\_\_\_\_\_  
\_\_\_\_\_

Case number (if you know): \_\_\_\_\_

Date of the Court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

\_\_\_\_\_

(3) Did you receive a hearing on your motion, petition or application?

☐ Yes ☐ No

(4) Did you appeal from the denial of your motion, petition, or application?

☐ Yes ☐ No

(5) If your answer to Questions (c)(4) is "Yes," did you raise this issue in the

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appeal? ☐ Yes ☐ No

(6) What was the result? \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_

**GROUND THREE: Denial of my right to Due Process in Violation of the Fifth Amendment**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): See attached (Ground Three)

**(b) Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

This denial of my rights is in violation of my  
constitutionally protected rights and is more appropriately  
addressed in a §2255 motion.

**(c) Post Conviction Proceedings:**



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(1) Did you raise this issue in any post-conviction motion, petition, or application after conviction other than direct appeal?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed:

\_\_\_\_\_  
\_\_\_\_\_

Case number (if you know): \_\_\_\_\_

Date of the Court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

\_\_\_\_\_

(3) Did you receive a hearing on your motion, petition or application?

☐ Yes ☐ No

(4) Did you appeal from the denial of your motion, petition, or application?

☐ Yes ☐ No

(5) If your answer to Questions (c)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

(6) What was the result? \_\_\_\_\_

\_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**GROUND FOUR:**

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(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**(b) Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**(c) Post Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application after conviction other than direct appeal?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed:

\_\_\_\_\_

\_\_\_\_\_

Case number (if you know): \_\_\_\_\_

Date of the Court's decision: \_\_\_\_\_

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Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition or application?

☐ Yes ☐ No

(4) Did you appeal from the denial of your motion, petition, or application?

☐ Yes ☐ No

(5) If your answer to Questions (c)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

(6) What was the result? \_\_\_\_\_

If your answer to Question (c)(4) is "Yes," state:

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: Claims of a deprivation of a Constitutionally protected right are more appropriately reserved and presented in a §2255 Motion.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☒

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If "Yes," state the name and location of the court, the case number, the type of proceeding, and the issues raised. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Brendan S. Leary, 1125 Chapline st.,  
Room 208, Wheeling, WV 26003

(b) At arraignment and plea: Same

(c) At trial: Same

(d) At sentencing: Same

(e) On appeal: Same

(f) In any proceeding after conviction other than direct appeal: N/A

(g) On appeal from any ruling against you in any post-conviction proceeding after conviction other than direct appeal: N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☒ No ☐
17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

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- (a) If so, give name and location of court that imposed the other sentence you will serve in the future: \_\_\_\_\_
- (b) Give the date the other sentence was imposed: \_\_\_\_\_
- (c) Give the length of the other sentence: \_\_\_\_\_
- (d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future?
- Yes ☐ No ☐

18. TIMELINESS OF MOTION: If your judgment of conviction became final more than one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.<sup>1</sup>

Therefore, you ask that the Court grant the following relief: the resentencing of Kidd to one which corresponds with his actual criminal culpability, the granting of an evidentiary hearing to fully

<sup>1</sup> The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255 paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of -

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court, if applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

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explore the claims presented within, a finding of Informa  
Pauperis with respect to Kidd,

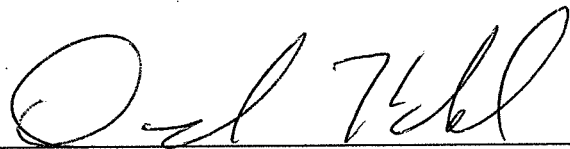
and any other relief to which you may be entitled.

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Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true  
and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing  
system on 9/2/2014 (month, day, year).

Executed (signed) on 9/2/2014 (date).

A handwritten signature in black ink, appearing to be "O. J. Kidd", written over a horizontal line.

Your Signature

If the person signing is not you, state the relationship to you and explain why you are  
not signing this petition.